Special Issue on Informers and The Smith Act

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I. F. Stone's Weekly

VOL. IV, NO. 38 OCTOBER 8, 1956 WASHINGTON, D. C. 15 CENTS

The Characters Who Infest The Security System

I

The Department of Justice has just filed an extraordinary document. It is the first full length portrait, by the government itself, of one of those ubiquitous informers on whom the livelihood, reputation, and the right to travel of Americans have come increasingly to depend. The portrait is drawn in an unprecedented motion which the Department of Justice filed with the Supreme Court on the eve of this week's argument in the Smith Act appeals. The Department asks that one of these appeals, from the conviction of five Communists in Pittsburgh, be sent back to the trial judge for a hearing to determine the credibility of one of its own principal witnesses.

The government's motion deals with an informer named Joseph D. Mazzei. Its portrait of the man, though damning, is far from complete. It omits testimony in the Pittsburgh case which disclosed that Mazzei was first approached by the FBI in December, 1941, and told that it had been decided, after investigation, that he would be a good person for undercover work in the Communist party. The reader can judge for himself, from the government's own description of Mazzei, how good a judge of character the FBI proved to be. Since even the *New York Times* did not print the text, we are making it available on page three. We believe it deserves wide circulation and close study. For 12 years, until Mazzei was produced as a witness at the Smith Act trial in Pittsburgh on March 26, 1953, Mazzei was one of those confidential operatives shielded from cross-examination in all kinds of loyalty, security, passport, waterfront, and defense plant cases on the ground that the disclosure of their identity would impair national security. This document proves how little such trust is deserved.

Too Sacrosanct to Be Questioned

Even liberal organizations like the American Civil Liberties Union and Americans for Democratic Action have come to acquiesce in the view that such men—as distinct from "casual informers"—should be exempt from the normal checks of confrontation and public testimony. In the Mazzei document the government itself admits what kind of creatures this exemption has been shielding. We would never have known about Mazzei if the government were able to handle criminal prosecutions as it handles security, loyalty and passport cases. To obtain a conviction under the Smith Act in Pittsburgh, it had to produce Mazzei in open court. Otherwise the public would never have had a chance at a closeup. The circumstances illuminate a type of character not at all rare. The testimony in the Pittsburgh case showed that in one Communist club, which had shrunk to a membership of three, two were FBI informants. The radical and labor movements swarms with them; their reports must create a storage problem. Mazzei himself estimated on the stand that, during his years of informing, his reports ran into thousands of pages and would fill "a big room." After reading the government's description of Mazzei on page three, you will shudder to think of what that big room must contain.

After the faceless informers lose their anonymity because they have been produced in court, they cash in as stars on the circuit of the Senate Internal Security Committee and the House Un-American Activities Committee. They obtain jobs as consultants on communism to private industry; newspaper columnists; witnesses in state witch hunts; writers, oracles and national heroes. These triumphs have their drawbacks. In those big rooms where the FBI keeps its files, no one ever knows how many whoppers are hidden, how many wacky fantasies are on record. But Congressional committees live on headlines, and in the headlines the whoppers sometimes grow too big for credibility, or involve people who have powerful friends and can strike back. This is what happened to Mazzei. He got to the point of testifying under oath in the Leo Sheiner disbarment proceedings in Miami that he had once beaten up a U.S. Senator for the Communists. There are limits to public credulity, even about witches, warlocks and Reds.

Not As Unaware As It Pretends

The Department of Justice would like it to be believed that this motion reflects a revulsion on its own part against such people as Mazzei. A footnote to the government's motion is designed to give the unwary reader the impression that until quite recently—"until less than ten days ago" in the case of the Solicitor General—the government was unaware of Mazzei's record. But in the government's motion there is only one episode which was not covered in the defense brief filed with the Court and sent the Solicitor General a month earlier. This is the tantalizing reference to a secret proceeding *three years ago* in which Mazzei "identified a certain Government official as a long-time active Communist party member." It would be interesting to know how and after what agonies this official succeeded in clearing himself, and why no action (foolish question!) was ever taken against Mazzei for perjury. Apparently it is only when informers recant, as did Matusow and Mrs. Natvig, that anything ever happens to them.

The government's air of innocence is contrived. The fact that Mazzei was cracked became obvious during the Pittsburgh trial, when he dashed down to Washington to testify before the McCarthy committee about a Communist plot to assassinate McCarthy. The defense at that time moved for a mistrial, but the government successfully opposed this, apparently regarding the McCarthy testimony as making it even less likely that

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A Maneuver, Not A Change of Heart, On the Part of The Government

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the jury would acquit. Most of the material the government uses was brought to its attention a year ago by the devoted research of Defense Counsel Frank Donner and his aides. When on October 6, 1955, the defense asked the Supreme Court for a hearing, its petition for certiorari included an appendix on "The Character of the Government's Witnesses." The content is indicated by the conclusion, "These revelations raise a compelling inference that petitioners were convicted by the testimony of pathological liars." But at that time a brief in opposition by the Solicitor General (filed November 10, 1955) dismissed the charges against Mazzei and other witnesses by saying snootily "the use of informers involves issues of credibility, not of law." Translated, this means that if the jury was satisfied with these witnesses, their credibility was no business of the Supreme Court.

Twin Surprise In April

But the government got a jolt last April—two of them, in fact—which may explain this motion to remand. On April 2, Chief Justice Warren upheld the Pennsylvania Supreme Court's decision reversing the State sedition conviction of Steve Nelson, who is also one of the five defendants in the Pittsburgh Smith Act case. And on April 30 the Supreme Court remanded to the Subversive Activities Control Board a defense motion to reopen the order requiring the Communist Party to register. The motion attacked the veracity of three main government witnesses in that SACB proceeding: Paul Crouch, Manning Johnson and Harvey Matusow. The motion cited the kind of evidence these men had given on other occasions. "If these witnesses in fact committed perjury in testifying in other cases on subject matter substantially like that of their testimony in the present proceedings," Mr. Justice Frankfurter ruled, "their testimony in this proceeding is inevitably discredited. . . . We cannot pass upon a record containing such disputed testimony." This implied that where witnesses could be shown to have lied in other proceedings, as Mazzei did, the court might order a new trial. The government may have feared that what happened in the SACB case would happen again in the Pittsburgh case. The government may have felt that it would be smart to come forward with a motion to remand the case, not for a new trial, but for a hearing by the trial judge on the credibility of one witness! The defense opposes this "limited and inadequate" proposal, arguing that after five years the defendants have a right to a hearing on the merits or a new trial, and that if the government suspects Mazzei of perjury, it ought to prosecute him. We are dealing here with a maneuver on the part of the government, not a change of heart.

II

The government cannot afford a change of heart. The pleadings in the Smith Act appeals on which the Supreme Court is hearing argument this week are full of Mazzeis. Normal surveillance of the Communist party is too dull; only the Mazzeis can supply the "hot stuff" about bloodshed, sabotage and assassination without which juries would be bored to death. Legal decorum requires some evidence of revolutionary intent, however distant, to cover with propriety what would otherwise be too nakedly a prosecution for opinion. Thus the government's brief in opposition last Fall cited testimony by another witness in the Pittsburgh trial that one defendant, Weissman, had said "when the time is ripe, sabotage will be used . . . the [Kanawha] Valley must be knocked out." The government argued, "A conspiracy to advocate doctrines with such ultimate objectives is, under this court's decision in *Dennis*, the sort of conspiracy to teach and advocate which may constitutionally be proscribed." Without this melodrama, the Smith Act cases would fall apart.

As the defense said last week in opposing the motion for a hearing on Mazzei's credibility, "The relief sought by the government is inadequate on still another ground. The considerations which becloud the credibility of Mazzei are quite applicable to [Matthew] Cvetic, who, as the government should know, lied at the trial about his record of psychiatric treatment; to Mrs. Mazzei, who was implicated in the Mullen imbroglio, to which the government has made reference in its motion; to Dewey C. Price, whose cock-and-bull yarn about sabotaging the Kanawha Valley is fully equal to Mazzei's more lurid productions; and to Mrs. Sylvia Hill, who insisted that petitioner [Steve] Nelson selected a public meeting in a high school auditorium to annouce plans for taking over the government." All four of those named were professional undercover agents for the FBI or military intelligence, as was Mazzei. The other two witnesses for the government were ex-Communists on the government payroll; the late William O'Dell Nowell who graduated from being a lieutenant of Gerald L. K. Smith in the early 40's to becoming a $4500 "consultant" for the Immigration and Naturalization Service in deportation cases. The other, John Lautner, seems to have gravitated to the FBI strictly from hunger and resentment. He was a $60 a week Communist functionary when he was named in one of the Stalin period Hungarian frameup trials as an FBI agent and thereupon expelled here from the Communist party. After some eight months out of work he became a $20 a day "expert" on Communism for the Justice Department. There was not a single witness at the Pittsburgh trial whose livelihood did not depend on coming up with the kind of evidence the government needed.

Lying for Malice, As Well As Money

Powerful protection encouraged lying for malice as well as pay. The government discusses Mazzei's involvement in bastardy charges but it does not disclose that he used the Senate Internal Security Committee to smear the woman who brought those charges. He told the committee she was a Communist party member assigned in 1940 as a waitress to report on the eating habits of Judge Musmanno. But her counsel furnished the Pittsburgh newspapers with proof that she didn't come to this country until 1946 and that Mazzei had threatened to "get even" with her for bringing the charges. When last heard from, Mazzei was in contempt of court for being $1,000 in arrears on the $8 a week he had been ordered to pay for the support of this woman's child. These are the kind of vermin set to watch over us and our political thinking by the FBI.

The government's motion to remand cites the Mullen affair, but if Mazzei was guilty of perjury in that case so were Mrs. Mazzei and Cvetic. Mazzei identified John J. Mullen, former Mayor of Clairton, Pa., and National Director of the Political Action Committee of the Steel Workers as a Communist. Luckily for Mullen, he was no obscure schoolteacher or friendless entertainer. He denied the charges under oath before the Senate Internal Security Committee and mustered support from Dave McDonald of the Steel Workers, who declared he had known Mullen personally for 20 years and vouched for him. The committee itself found serious discrepancies in Mrs. Mazzei's story supporting her husband's identification and in Cvetic's testimony that Mullen was a "non card carrying" Communist. If Mazzei lied in those hearings, so did Mrs. Mazzei and Cvetic.

The pleadings in the California Smith Act cases, also being heard on appeal by the Supreme Court this week, disclose the same kind of informers as the Pittsburgh case. One government witness, Scarletto, testified that it "could be" that a woman whose name he reported to the FBI had "treated him like a son." He considered it "funny," when questioned about it on the stand, that he had succeeded in soliciting a neighbor—whom he knew to be anti Communist—for $5 for the *People's World* and had then turned in her name to the

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For The First Time The Government Confesses One of Its Informants May Be A Perjurer

Full Text of the Motion to Remand in the Pittsburgh Smith Act Case

The Solicitor General, on behalf of the United States, respectfully moves that this case, now pending in this Court on a writ of certiorari to the Court of Appeals for the Third Circuit, be remanded to the District Court for the Western District of Pennsylvania for the hearing hereafter described. The facts on which this motion is based, and the reasons for granting it, are as follows:

Joseph D. Mazzei was called as a witness for the Government in the trial of this case at Pittsburgh, Pa., on March 26, 1953. He gave testimony which directly involved two of the petitioners, Careathers and Dolsen. See, e. g., *United States v. Mesarosh*, 223 F. 2d 449, 454-5, 458 (S. A. 3).

Up until March 26, 1953, Mazzei had served as a Government informant and had reported to the Federal Bureau of Investigation on the activities of the Communist Party in Western Pennsylvania since 1942. Prior to his use as a witness in this case, his proposed testimony was as usual checked and corroborated, to the extent possible, by independent sources. Certain of his testimony as to oral statements made by Dolsen and Careathers could not be corroborated by independent sources, but Government counsel had no reason to doubt, and did not doubt, that this testimony was truthful. It is also significant that those portions of his testimony which, if untrue, could have been contradicted by persons other than these five petitioners were not contradicted; in fact, not one item of Mazzei's testimony was contradicted at the trial.

Still Think He Told The Truth

It is still the position of the Government that the testimony given by Mazzei at the trial was entirely truthful and credible. However, since that testimony, Mazzei has given certain sworn testimony (before other tribunals) which the Government, on the basis of the information in its possession, now has serious reason to doubt. While certain aspects of Mazzei's later testimony are supported to some degree, these incidents, taken cumulatively, lead us to suggest that the issue of his truthfulness at the trial of these petitioners should now be determined by the District Court after a hearing. These incidents include:

On June 18, 1953, Mazzei testified before the Senate Permanent Subcommittee on Investigations, in Washington, D. C. that at a meeting of the Civil Rights Congress on December 4, 1952, one Louis Bortz told him that he, Bortz, had been "selected by the Communist Party to do a job in the liquidation of Senator Joseph McCarthy." Mazzei further testified that the said Bortz conducted Communist Party classes in Pittsburgh to familiarize Party members with the handling of firearms and to instruct them in the construction of bombs.

On November 14, 1952, Mazzei pleaded guilty to charges of adultery and bastardy in a Pennsylvania state court. This fact was brought out during his cross-examination at the petitioners' trial. On October 2, 1953—after the completion of the trial—Mazzei filed a petition in the state court to have the guilty plea set aside. One of the grounds set forth in his petition was that he "was not guilty of the charge to which he was induced to plead. * * * but did so only in his official capacity (as a Government informant) at the insistence of his superior in the FBI to avoid testifying." At a hearing on the above petition on October 6, 1953, a Special Agent of the FBI denied Mazzei's allegations under oath. Mazzei's petition was dismissed by the court on October 6, 1953.

"At A Secret Proceeding"

In November 1953, Mazzei, at a secret proceeding, identified a certain Government official as a long-time active Communist Party member.

On June 10 and 11, 1955, Mazzei testified before the Senate Subcommittee on Internal Security regarding possible Communist influences motivating attempts to discredit Justice Michael Musmanno of the Supreme Court of Pennsylvania. In the course of his testimony, Mazzei identified John J. Mullen, National Director, Political Action Committee, Steel Workers of America, as a member of the Communist Party in Pittsburgh during the period that Mazzei was a Government informant. Mazzei also testified that since 1942 he met Mullen ten or fifteen times a year, as a fellow Communist Party member.

On July 2, 1956, Mazzei testified in disbarment proceedings against one Leo Sheiner before the Circuit Court of the Eleventh Judicial Circuit of Florida, in Miami. On cross-examination, Mazzei reiterated his charge that he was induced to plead guilty to the adultery and bastardy charge in the Pennsylvania state court in November 1952 by an Agent of the FBI. Items of his testimony as to alleged Communist activity are as follows:—that he visited Dade County, Florida, on behalf of the Communist Party during each of the years from 1946 to 1952; that the Communist Party in Miami had attempted to lease a bus line which served the Opa-locka Air Base; that in 1948 the Communist Party made plans for the armed invasion of the United States on orders from the Soviet Union and that he, Mazzei, was selected to go to Miami in 1948 because it was a seaport; that he took courses in the Communist Party on sabotage, espionage, and handling arms and ammunition; that he was taught by officers of the Communist Party in Pittsburgh how to blow bridges, poison water in reservoirs, and to eliminate people; that he discussed with Sheiner in 1948 "knocking off" a Judge Holt (a Florida judge) whom they (presumably the Communist Party) were having trouble with, and importing one Louis Bortz, the strong-arm man for the Communist Party, to do the job; that he and the Communist Party had made plans to assassinate Senators, Congressmen, and even went to Washington and beat up a Senator; and that, to his knowledge, Sheiner was extensively engaged in Communist Party activities in 1945, 1947, 1950, 1951, and 1952. None of this testimony at the Florida proceeding is supported or corroborated by information in the possession of the Government.

$1,000 A Month From The FBI!

Mazzei likewise testified that the FBI arranged to get him into the Army so that he could watch a certain Communist Party member; that he never wore a uniform and that he was discharged the day after the Communist Party member he was to watch was discharged. In actual fact, Mazzei's career in the Army was the result of the operation of the Selective Training and Service Act of 1940 and the FBI had nothing to do with his service in the armed forces. He also testified that sometimes the FBI paid him about $1,000 a month for expenses. From the period 1942 to 1952, according to the Bureau records, Mazzei was paid the total of $172.05 as expense money.

Mazzei likewise testified that he had never been arrested in his life. In fact, he was arrested in connection with the paternity case brought against him in Pennsylvania by one Irene Corva. He has been arrested several times subsequent to this for his failure to make support payments to this woman.[1]

In these circumstances, while we believe that Mazzei's trial testimony was truthful, we also believe that the interests of justice would best be served by remanding this case to the District Court for the holding of a judicial hearing at which it would be determined whether or not Mazzei's testimony at the trial was credible. Cf. *Communist Party v Subversive Activities Control Board*, 351 U.S. 115.[2] Such a remand should, of course, be without prejudice to the right of petitioners to preserve and renew the points presented in their pending petition and brief in this case.

We need add only that we make this motion, at this late stage, because we feel compelled to do so by our duties as officers of the Court and as public prosecutors (*Berger v. United States*, 295 U.S. 78, 88).

We do not mean to suggest that mere allegations of perjury would ever be sufficient to require or warrant the hearing here proposed. However, in the particular circumstances of this case we believe that it is the responsibility of the prosecutor to suggest that such a hearing would be appropriate in the interests of justice.

J. LEE RANKIN, Solicitor General

WM. F. TOMPKINS, Ass't Attorney General

September, 1956.

[1] The complete details of Mazzei's testimony in Florida, as set forth in this motion, did not come to the attention of the Department of Justice until September 1956, and the history of Mazzei's post-trial testimony did not come to the Solicitor General's attention until less than ten days ago.

[2] The hearing would be comparable to that held by Judge Dimock with respect to the witness Matusow in *United States v. Flynn*, 216 F. 2d 354 (C.A.2), certiorari denied, 348 U.S. 909, and that held by Judge Thomason in *Jencks v. United States*, No. 23, this Term.

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The FBI Alone Employs The Kind of Risks the Security System Bars

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FBI. Scarletto admitted prior false statements under oath. He explained false testimony that he was married in 1948 by relating that he could not get married in church because of a prior marriage and therefore simply lived with the woman he called his wife. Scarletto testified that the war in Korea and its causes were discussed in November, 1949, about six months before the war began, in a school which ceased operating prior to the outbreak of hostilities. He too was a Communist for the FBI.

The political level of these informers is indicated by another California witness. This man testified that he possessed the mysterious ability to identify a Communist "by looking at him." But he testified "I never knew and still don't know a darn thing about Marxism-Leninism and I pray God I never do" and added that he "never listened very much unless some one particular person made a statement that might have endangered the safety of the United States." Then he wrote it down!

In the California case, too, there were informers recruited by hunger and blackmail. The witness, Saunders, was screened out of the Coast Guard in 1948 for past membership in the Communist party. In 1951, he went to the FBI and volunteered to appear as a witness in the California case. "About the same time," says the defense brief, "he was cleared by the Coast Guard and permitted to return to his work after a hearing at which neither he nor anyone else testified on his behalf." The witness, Honig, at first refused to talk with the FBI. Shortly before his change of heart, he was arrested on a shoplifting charge which he said was a mistake. The charge was dropped and his fingerprint records destroyed. Since then, he has testified.

III

I will cover the hearings and the issues in the Smith Act cases next week. What interests me here is the glimpse they afford—because they were public trials—of the informer system and the characters who inhabit it. One of the most striking features of this underworld of secret police is the way it violates all those tenets not only of loyalty but of security which govern the hiring of personnel everywhere else in the government. Only the FBI seems to be allowed to hire security risks—people with criminal records, irregular sex habits, loose moral standards and dubious mental health. Hospital records in the Pittsburgh case show that Cvetic—hero of that lucrative radio, movie and Saturday Evening Post classic, "I Was A Communist for The FBI"— has been under treatment for years as an alcoholic and psychotic; such a background would rule him out at once as a security risk in any other government job. This man whom the FBI promoted and paid for many years in its network of political surveillance was termed "unbelievable and incredible" by the U.S. Court of Appeals for the Seventh Circuit in a deportation case in June of last year (*U.S. v. Brzovich*). Yet his reports were taken seriously for years by the FBI and he was shielded from cross-examination by his victims in that fungoid area of "security" in which people's rights and reputations are disposed of by administrative process.

Mazzei's irregular sex habits, would have ruled him out of any government job; few employers would care for such a man. But it was during his work—and his wife's—as a professional FBI undercover man that he lived with another woman on the side; indeed the Pittsburgh record shows he once used a telegram from FBI headquarters to hide the liaison from his wife. Dewey Price, the witness who swore to remarks about sabotage in Pittsburgh, had a police record which included a 3-year sentence under the prohibition act and a drunkenness charge on which he forfeited bond; this did not keep the FBI from hiring him to work as a confidential informant in the Communist Party. These are the kind of people on whom the whole security system rests, and they are a rotten foundation. The record in these cases ought to be studied carefully by those who have been taken in by the argument that the government has a right to keep certain kinds of informers secret and to exempt them from confrontation. The Smith Act cases, where this type had to be produced in court, provide a series of instructive glimpses. And the Mazzei document lifts the curtain officially on the shameful faces behind the faceless informer.

The Difference

"The Court must recognize that there is a material difference between a witness who is a police officer and a witness who is a paid informer. The police officer is oath-bound to observe the Constitution and the laws of the land. He must conform to certain standards of character, intelligence and trustworthiness. He will hold his job whether or not a conviction is obtained in the pending case. None of this is true of informers. As has been frequently pointed out, such persons present problems of credibility far different from those of the ordinary interested witness. For one thing their livelihood depends upon their ability to produce the information which they have been hired to report."

—Defense brief in the Pittsburgh Smith Act cases.

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